

STATE OF MICHIGAN
COURT OF APPEALS

NEWMAN EQUITIES,

Plaintiff-Appellee,

v

CHARTER TOWNSHIP OF MERIDIAN,

Defendant-Appellant.

FOR PUBLICATION

October 21, 2004

9:15 a.m.

No. 248722

Ingham Circuit Court

LC No. 00-091212-CZ

Official Reported Version

Before: Bandstra, P.J., and Fitzgerald and Hoekstra, JJ.

FITZGERALD, J. (*dissenting*).

I respectfully disagree with the majority's conclusion that the trial court erred in reversing the voters' decision in this zoning dispute.

The land at issue consists of three parcels comprised of approximately forty acres near the commercial center of the township. Following the recommendation of the township planning commission, the township board passed an ordinance changing the zoning from residential to commercial. Township voters defeated the rezoning in a referendum, returning the only readily developable portion of the land to single-family residential zoning. Plaintiff sued to nullify the referendum on the ground that its substantive due process rights were violated and that the postreferendum zoning amounted to a confiscatory taking. The trial court voided the referendum and ordered defendant to restore the commercial zoning.

Defendant argues that the trial court gave insufficient deference to the referendum result. Referenda disapproving zoning legislation are themselves legislative acts, *Stadle v Battle Creek Twp*, 346 Mich 64, 69; 77 NW2d 329 (1956), which are entitled to deference from reviewing courts. *Kropf v Sterling Hts*, 391 Mich 139, 162; 215 NW2d 179 (1974). But the fact that the zoning was imposed by a referendum "does not preclude a finding that the resulting zoning classification was unconstitutional" *Poirier v Grand Blanc Twp*, 167 Mich App 770, 777; 423 NW2d 351 (1998).

The court found that the referendum result, which overturned the actions taken by defendant's planning commission and township board, was arbitrary and did not advance any legitimate governmental interest. A zoning ordinance is clothed with the presumption of validity. *Kirk v Tyrone Twp*, 398 Mich 429, 439; 247 NW2d 848 (1976). Nonetheless, a citizen "may be denied substantive due process by [a] city or municipality by the enactment of . . . a

zoning ordinance, which has, in the final analysis, no reasonable basis for its very existence." *Kropf, supra* at 157.

In looking at [the] "reasonableness" requirement for a zoning ordinance, this Court will bear in mind that a challenge on due process grounds contains a two-fold argument; first, that there is no reasonable governmental interest being advanced by the present zoning classification, or secondly, that an ordinance may be unreasonable because of purely arbitrary, capricious and unfounded exclusion of other types of legitimate land use from the area in question. [*Id.* at 158.]

This Court will give "'considerable weight'" to the findings of the trial court. *Kirk, supra* at 439-440 (citation omitted). Referenda disapproving zoning legislation are themselves legislative acts, *Stadle, supra* at 69, that are entitled to deference from reviewing courts. *Kropf, supra* at 162.

The evidence supports the trial court's finding that the postreferendum zoning of parcel 3 as single-family residential is inconsistent with defendant's comprehensive development plan (CDP). The former head of defendant's planning commission testified that single-family residential zoning was inappropriate for the area that included plaintiff's property. The court also concluded that while the goal of creating a "walkable community" in the vicinity of the township's commercial core was a good and worthwhile concept, the goal was unrealistic given the expanding nature of the commercial core. The court also rejected the contention that the zoning of plaintiff's property would further the goal of creating a buffer zone between commercial and noncommercial land use. Additionally, the court found defendant's expert testimony that plaintiff could "reasonably develop" the property and "receive an economic" return to be "incredible and unbelievable."

Giving the proper weight to the findings of the court, I conclude that the trial court did not err in concluding that the postreferendum zoning of plaintiff's property is arbitrary and capricious. The testimony and documentary evidence presented belies the contention that the present zoning of plaintiff's property comports with the way the surrounding area has been developed. Further, plaintiff invested, with defendant's encouragement, nearly \$700,000 in building a four-line primary arterial road to help relieve congestion in the township's commercial core. The trial court properly concluded that defendant cannot now "avoid the inevitable result of its actions." I would affirm the decision of the trial court.

/s/ E. Thomas Fitzgerald